***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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W.P.No.22971 of 2005

% 28-12-2005

Between:

Girijan Cooperatibe Corporation Ltd.,

Visakhapatnam, rep. by its Vice-Chairman & Managing Director & another

…Petitioners

And

$ Industrial Tribunal II, M.J.Road, Hyderabad & another

…Respondents

! COUNSEL FOR PETITIONERS: Mr.N.SREEDHAR REDDY

^ COUNSEL FOR RESPONDENT NO.2: Mr.V.NARASIMHA GOUD

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> Head Note:

? CITATIONS:

AIR 1984 SC 153

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.22971 OF 2005

Dated December 2005

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O R D E R:

The second respondent was employed as Godown Clerk, in the petitioner Organisation. Alleging that the second respondent resorted to certain acts of misconduct, the petitioners initiated disciplinary proceedings against him, by issuing a charge sheet dated 18.3.1997. A domestic enquiry was conducted and a report was submitted, by the enquiry officer, holding that the charges against the second respondent are proved. Ultimately, an order was passed on 3.4.1998, dismissing him from service.

The second respondent raised an industrial dispute before the Industrial Tribunal-II,

Hydrabad, for short “the Tribunal”. It was initially numbered as I.D.No.108 of 2000, and later on, renumbered as I.D.No.73 of 2002. One of the contentions of the second respondent was that the domestic enquiry was not conducted, in accordance with law. A docket order was passed by the Tribunal on 2.7.2003, holding that the domestic enquiry did not accord with the principles of natural justice, and as such, was vitiated. Thereafter, the Tribunal proceeded to decide the matter on merits. It took the view that the petitioners herein did not adduce any evidence in the matter. Taking that and other aspects, into account, the Tribunal passed an award dated 19.8.2003, setting aside the order of dismissal, and directing reinstatement with 50% of back wages.

Petitioners filed W.P.No.22649 of 2003, before this Court, challenging the award, dated 19.8.2003. The writ petition was allowed, on the ground that the Tribunal did not record any reasons, before concluding that the domestic enquiry was vitiated. The award was set aside and the matter was remanded to the Tribunal, for fresh consideration and disposal.

After the remand, the Tribunal took up the question as to whether the domestic enquiry conducted by the petitioners is valid. After hearing both the parties, it passed an order, dated 6.10.2005, holding that the domestic enquiry was not conducted in accordance with law. Consequently, it directed the petitioner to file certain documents, examine the witnesses in support of charges leveled against the second respondent, and to proceed further in the matter. This writ petition is filed, assailing the order dated 6.10.2005.

Petitioners contend that the conclusion arrived at by the Tribunal, in this regard, suffers from error apparent, on the face of the record. It is urged that on the three aspects, *viz*. the service of charge sheet, furnishing of documents and furnishing of the copy of the enquiry report on the second respondent, the view taken by the Tribunal, is contrary to record.

The second respondent filed counter affidavit, denying the allegations of the petitioners. It is pleaded that the domestic enquiry was conducted, in utter violation of principles of natural justice. It was also urged that no witnesses were examined, and no documents were filed before the enquiry officer, much less the second respondent was permitted to cross-examine them. The second respondent contends that the findings recorded by the enquiry officer were perverse, and not supported by

record.

Sri N.Sreedhar Reddy, learned counsel for the petitioners, submits that the two charge sheets issued against the second respondent were served, and in fact, he has responded to the same. He also contends that the second respondent filed an application before the enquiry officer, for furnishing certain document and that request was also complied with. He urges that a copy of the enquiry report, together with a notice issued by the petitioners, requiring the second respondent to offer his comments thereon, was served on 13.2.1998, and despite the same, the Tribunal recorded a finding to the effect that the copy of the enquiry report was not furnished. He contends the Industrial Tribunal can declare the domestic enquiry, invalid, only when there exist any lapses, on the part of the management, and not as a matter of course.

Sri V.Narasimha Goud, learned counsel for the second respondent, submits that the findings recorded by the Tribunal, in passing the order under challenge, cannot be reappreciated by this Court, and the writ petition is not maintainable, against an order passed by the Tribunal, touching on the validity of domestic enquiry. He contends that the second respondent has pointed out the material irregularities committed, during the course of domestic enquiry, and that the same was taken into account by the Tribunal, while passing the impugned order.

The petitioners initiated disciplinary proceedings against the second respondent, on the allegation that he misappropriated the funds of the petitioners Organisation. A charge memo was issued on 18.3.1997 and thereafter, a second charge memo was issued on 21.6.1997. After receiving the first charge memo, the second respondent submitted a petition on 10.6.1997, with a request to furnish the copies of certain documents. Through memo, dated 20.6.1997, the enquiry officer furnished the copies of documents. The enquiry was proceeded with, thereafter, and an enquiry report was submitted on 19.12.1997, holding that the charges are proved. On receiving the same, the second petitioner issued proceedings dated 31.1.1998, calling upon the second respondent, to offer his comments on enquiry report. The same was received by the second respondent on 13.2.1998. Thereafter, he offered his comments on 27.2.1998. On consideration of the same, a further show-cause notice dated 28.2.1998 was issued. This in turn was followed by the order of removal, dated 3.4.1998.

The second respondent raised an industrial dispute, before the Tribunal. The developments that have taken place in the industrial disputes, on earlier occasions, have already been mentioned in the introductory paragraphs. Suffice it to say that the matter was remanded to the Tribunal for fresh consideration, through orders of this Court in W.P.No.22649 of 2003. A specific direction was issued to the Tribunal, to decide whether the domestic enquiry held against the second respondent was proper and legal. It is in this context that the order, dated 6.10.2005, was passed by the Tribunal, on the preliminary question.

Learned counsel for the second respondent raised an objection, as to the permissibility of the issuance of a direction by the High Court, to the Tribunal, to decide the question as to the legality of domestic enquiry, as a preliminary issue. Reliance is placed upon the judgment of the Supreme Court in ***D.P.MAHESHWARI v. DELHI ADMINISTRATION***. It is true that the Supreme Court disapproved the practice of issuance of directions by the High Courts, to the Labour Courts, to pronounce upon the validity of domestic enquiry, as a preliminary issue. In this and in other connected judgments, the Supreme Court emphasized upon the need for adjudication of the industrial disputes, as a whole, at the earliest, instead of spreading it to various stages. This objection, however, ought to have been raised by the second respondent, when a direction was issued by this Court on 22.6.2005, while disposing of W.P.No.22643 of 2003. Apart from not raising any objection to it, he acquiesced in it, by proceeding with the matter before the Tribunal, as directed by this Court. Therefore, the objection raised by him, at this stage, cannot be entertained.

A perusal of the impugned order passed by the Tribunal discloses that it treated the domestic enquiry conducted by the petitioners, as illegal, on three grounds, *viz.* a) the second respondent was not served with the charge memos; b) he was not was furnished with the documents requested by him; and
c) he was not furnished copy of the enquiry report.

This Court is aware of the limitations upon the jurisdiction of the High Court, under Article 226 of the Constitution of India, to interfere with the findings of fact. However, if the examination of the matter discloses that the findings are perverse in nature, the High Court cannot gloss over the matter. The reason is that serious consequences flow out of such issues. For example, if a domestic enquiry, which was conducted

several years ago, is found to be defective, it would be difficult to expect the management to adduce evidence, since much of the evidence may not be available due to passage of time. Secondly, time and again, the Supreme Court said that the Labour Court cannot function, as an appellate authority, over the findings recorded in the domestic enquiry, and it can interfere, if only it arrives at the conclusion that the proceedings against the employee were malafide, or that the punishment was imposed as a measure of victimization. It is in this context that the matter needs to be verified.

The first ground, on which the Tribunal found the domestic enquiry to be defective, was about the service of charge memos on the second respondent. As observed earlier, two charge memos dated 18.3.1997 and 21.6.1997, were issued to the second respondent. It is not in dispute that the first charge memo was served upon the wife of the petitioner on 11.4.1997, and the second charge memo was served upon the second respondent, as well as his wife. The reason assigned by the Tribunal in treating the service as not valid, is that the wife of the second respondent did not receive the memos "voluntarily". In the words of the Tribunal, the reason runs as under:

> "There are no convincing documents from respondents side that all the charge memos were duly served on the petitioner (second respondent) or that voluntarily wife of the petitioner acknowledged the charge memos issued against the petitioner on his behalf"

It is a mater of record that on receiving the first charge memo, the second respondent made a representation dated 10.6.1997, requesting the second petitioner to furnish certain documents. The first paragraph of the representation reads as under:

> "In response to the charge memo first cited (18.3.1997), a request was made to your goodselves to supply copies of relevant material papers referred therein to enable to submit a detailed explanation to the charge memo. But till today no material papers were supplied."

From this, it is clear that the second respondent did not make any grievance, as regards the service of charge memo, dated 18.3.1997. Admittedly, the second charge memo, dated 21.6.1997, was served on the second respondent, as well as

his wife. Therefore, the observation of the Tribunal, in this regard, runs contrary to the record.

The second objection, which weighed with the Tribunal, was the alleged failure of the petitioners, in complying with the request of the second respondent, to furnish the documents. It referred to the letter, dated 10.6.1997, addressed by the second respondent, as well as to the documents mentioned therein. Through a covering memo, dated 20.6.1997, the second respondent was furnished the copies of the relevant documents. Subsequently, the second respondent was permitted to peruse the relevant records on 9.7.1997. He endorsed on that date, to the effect that he attended the office of the second petitioner and verified the records required by him. At no point of time, he made any grievance about
non-furnishing of any documents, or rejection of permission to peruse the records. The Tribunal, however, travelled on a different line and observed as under:

> "It is not the case of the unauthorized absenteeism or some other simple charge, but the case of misappropriation of the amount to the tune of Rs.2,73,696.50 ps., and in such circumstances for fair enquiry, it is the duty of the respondents to furnish copies of the relevant documents sought for by the petitioner (second respondent), but such copies of documents were not at all furnished to him. Mere endorsement that the said records were verified is not sufficient compliance in this case."

Another observation made in this regard reads as under:

> "Further, originals of copies of the said documents were not at all filed in this case by the respondent"

These observations present a typical instance of perversity.

Coming to the third ground, the Tribunal proceeded to discuss the precedents, in relation to the importance of furnishing the copy of the report of the enquiry officer, before any punishment is inflicted. Reverting to the facts of the present case, it observed as under:

> "In this case there is no material from the respondents side that before dismissal of the petitioner (second respondent) from service for the alleged proved misconduct of misappropriation, comments or objections on the said enquiry report were called for from the petitioner by serving copy of the enquiry report duly on him."

It has already been pointed out that after receiving the report from the enquiry officer, the second petitioner herein issued proceedings, dated 31.1.1998, requiring the second respondent to offer his comments on the enquiry report. The notice, together with enclosures, was served upon the second respondent, on 13.2.1998. The petitioners have placed before this Court, the copies containing the acknowledgement of the second respondent, and the learned counsel for the second respondent has not disputed the same.

The second respondent submitted his comments on 27.2.1998. The opening sentence of the same reads as under:

> "The order under reference (31.1.1998) is served on me on 13.2.1998. I was directed to submit my explanation if any within 15 days from the date of receipt of the order. Therefore, within the said period allowed by you, I am submitting the explanation. I have gone through the order under reference and the enquiry report and beg to submit that the order and the report are one sided, contrary to facts, documents and G.C.C. employees Service Regulations and principles of natural justice."

Had the Tribunal taken the trouble of reading these three sentences, it would not have committed a glaring illegality, in arriving at conclusions, which are ex facie contrary to the record.

There was absolutely no justification, on the part of the Tribunal, in treating the domestic enquiry conducted against the second respondent, as illegal, on the basis of the perverse and incorrect findings recorded by it. Normal restraint exercised by the High Court, in the matter of interference with the findings of fact, must not result in putting a seal of approval on the blatant illegality committed by the subordinate Tribunals. The hesitation on the part of the High Court, to interfere even in such cases, would only embolden the subordinate Courts and Tribunals, to decide the matters casually, or whimsically. If the domestic enquiries conducted by employers are to be interfered, in the manner adopted by the Tribunal, it would result in chaotic situations. The industrial adjudication, which proceeds on these lines, would bring about industrial disorder, and not peace.

For the foregoing reasons, the writ petition is allowed, and the order dated 6.10.2005 is set aside. The Labour Court shall proceed to decide the matter, treating the

domestic enquiry as legal and valid. There shall be no order as to costs.

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(**L.NARASIMHA REDDY, J)**

Dt. 28th December 2005

Note: L.R.copies be marked.

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